IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION LODGING NO.2389 OF 2006

Aurica Laminates Ltd.....Petitioner

Vs.

The Bharat Co-op.Bank (Mumbai) Lts..Respondents

Mr. P.K. Samdani, Senior Counsel with Mr. Birendra Saraf & Mr. Prakash Shah i/b. Prakash & Co., for the Petitioners.
Mr. Prashant Naik, for respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE: 16TH OCTOBER,2006

P.C.

. Rule. Heard forthwith.

2. Against the notice under Section 13(4) of the Securitisation and Reconstruction of the Financial Assets and Enforcement Act, 2002 the petitioners herein preferred an Appeal under Section 19 of the said Act. It appears that proper court fees were not paid and consequently the Registrar instead of calling on the petitioners to pay proper court fees declined to register the Appeal. The petitioners thereafter removed the irregularity and paid the necessary court fees whereupon the appeal was registered. When the Appeal came up for hearing before the learned D.R.T. the learned Member raised an objection as to how the Registrar could restore the Appeal which had been rejected earlier. An

Appeal preferred against the said order a conditional order dated 26th July, 2006 has been passed directing the petitioners herein to deposit 25% of the sum of Rs.3.38 crores in order to entertain the Appeal.

3. In our opinion this is a case which should attract the extra ordinary jurisdiction of this Court. No person can be denied remedy at law on account of misapplication of law by the Tribunal. This is one such case. The law is settled that failure to deposit the court fees would amount to an irregularity and not an illegality. It could be understood if time had been given the petitioners to cure that defect and that had not been granted and thereafter the appeal was rejected if there were rules to that effect. In the light of that in our opinion whatever be the reasons on which the learned D.R.T. passed the order, that order would have to be set aside as the petitioners did not have an opportunity of putting up their case. The question of petitioners being called upon to deposit on the particular facts of this case also will not arise. Considering the above we are disposing of this petition by issuing the following directions:-

(i) The order dated 26th July, 2006passed by the D.R.A.T., and the order dated 17th May, 2006 passed by the D.R.T. are set aside. The D.R.T. is directed to hear the appeal and dispose it off according to law. The Appeal to be heard as

expeditiously as possible. The Appeal will have to be heard subject to whatever objections which the contesting respondents will have.

(ii) Consequent upon this order the Appeal before the D.R.A.T. has become infructuous.

(iii) Writ Petition stands disposed of accordingly with no order as to costs.

(F.I. REBELLO, J)

(ANOOP V. MOHTA,J).